

Federal Communications Commission Enforcement Bureau 45 L Street, N.E. Washington, D.C. 20554

REPORT ON PIRATE RADIO ENFORCEMENT AND IMPLEMENTATION OF THE PREVENTING ILLEGAL RADIO ABUSE THROUGH ENFORCEMENT ACT JANUARY 4, 2021

The Commission submits this report in accordance with its obligations under the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act or Act). Section 511(c) of the PIRATE Act requires the Commission, not later than one year after enactment and annually thereafter, to submit to the Committee on Commerce, Science, and Transportation of the U.S. Senate and the Committee on Energy and Commerce of the U.S. House of Representatives (together, the Committees) a report on (a) implementation of the PIRATE Act, and (b) the associated enforcement activities for the previous fiscal year. Accordingly, we are submitting this first annual PIRATE Act report to the Committees.

Pirate radio broadcasting is the unauthorized transmission of radio frequency signals on the frequencies in or adjacent to the FM and AM radio bands. Pirate radio causes a number of harms, including interference that pirate radio stations inflict upon the receipt and transmission of licensed radio station signals, which then may fail to transmit public safety emergency alert messages. Enforcement against pirate radio broadcasters has proven difficult historically. To enhance enforcement capabilities, Congress enacted the PIRATE Act.

The PIRATE Act added a new section to the Communications Act of 1934, as amended, enumerated as section 511 and titled "Enhanced Penalties for Pirate Radio Broadcasting; Enforcement Sweeps; Reporting." Sections 511(a) and (b) raise the amount of fines the Commission may issue against pirate radio broadcasters, setting new maximum forfeiture levels of up to \$100,000 per day and \$2 million total. Moreover, these enhanced penalties apply not only to the operator of a pirate radio station, but to any person who "willfully and knowingly does or causes or suffers to be done" any pirate radio broadcasting. These enhanced forfeiture amounts are "in *addition* to any other penalties provided by law."

The Commission has taken the following steps to begin implementing the PIRATE Act:

• *Notice to property owners and property managers*. The PIRATE Act granted the Commission authority to pursue enforcement sanctions against any party that "suffers to be done," or allows, pirate radio activities.⁷ This provides us with the ability to take

¹ Preventing Illegal Radio Abuse Through Enforcement Act, Pub. L. No. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

² The enforcement activity section of the report may include "information on efforts to enlist the cooperation of Federal, State, and local law enforcement personnel to assist such enforcement activity." S. Rep. No. 116-178 at 7.

³ *Id.*; 47 U.S.C. § 511.

⁴ 47 U.S.C. § 511(a).

⁵ 47 U.S.C. § 511(a) – (b).

⁶ 47 U.S.C. § 511(b) (emphasis added).

⁷ 47 U.S.C. § 511(a).

enforcement action against property owners and property managers that, after receiving notice of pirate radio transmissions emanating from properties that they own or control, continue to allow such activity. Commission staff has devised a template to inform property owners and property managers of apparent pirate radio broadcasts from their property and to describe the potential consequences to the property owner or manager if such activity does not cease. The FCC Field Director issued the first such notices, based on the template, to certain property owners or managers in New York City on December 17, 2020.⁸ Although these ongoing proceedings are in their early stages, initial discussions with the property owners have been promising.

- Section 511 rulemaking. The Act directed the Commission to adopt rules providing that, absent good cause, the Commission will proceed directly to issue a Notice of Apparent Liability for Forfeiture for violations of the PIRATE Act without first issuing a Notice of Unauthorized Operation. The Enforcement Bureau (Bureau), in conjunction with the Office of Managing Director, adopted rules implementing that directive on December 17, 2020. In addition, the Commission updated its rules to reflect the new maximum forfeitures that the Commission may impose as sanctions for pirate radio broadcasting. In the commission of the Commission of
- Outreach. The Bureau drafted materials designed to educate commercial and residential property owners and managers about pirate radio operators and the new potential penalties for permitting pirate radio operators to operate on their property. Bureau staff have identified professional real estate owner and manager associations which it plans to contact to offer education on these issues.

The Commission took the following enforcement actions against pirate radio operators in 2020:

- On July 1, 2020, the Commission resolved a long-running pirate radio investigation with Acerome Jean Charles, reaching a settlement with this individual. He agreed to a monetary settlement with the Commission, including a significant suspended monetary penalty that will be triggered if Jean Charles resumes pirate broadcast operations, along with voluntary surrender of the station's broadcasting equipment.¹²
- On July 1, 2020, the Commission resolved a long-running pirate radio investigation with Gerlens Cesar, reaching a settlement with him. This individual agreed to a monetary settlement with the Commission, including a significant suspended monetary penalty that

⁸ Letter from Axel Rodriguez, Field Director, FCC Enforcement Bureau, to Jackson Heights 95 LLC and Bronstein Properties LLC, Queens, New York (Dec. 17, 2020), https://docs.fcc.gov/public/attachments/DOC-368817A1.pdf; Letter from Axel Rodriguez, Field Director, FCC Enforcement Bureau, to BRG 3520 97 LLC, KRR Queens 3 LLC, and BRG Management LLC, Queens, New York (Dec. 17, 2020), https://docs.fcc.gov/public/attachments/DOC-368827A1.pdf; Letter from Axel Rodriguez, Field Director, FCC Enforcement Bureau, to BRG 3512 LLC, KRR Queens 1 LLC, and BRG Management LLC, Queens, New York (Dec. 17, 2020)
https://docs.fcc.gov/public/attachments/DOC-368826A1.pdf. See also News Release, FCC, FCC Enforcement Bureau Warns Property Owners and Managers of Significant New Financial Penalties for Allowing Illegal Broadcasting on their Property (Dec. 17, 2020), https://docs.fcc.gov/public/attachments/DOC-368836A1.pdf.

⁹ 47 U.S.C. § 511(f).

¹⁰ Amendment of Section 1.80 of the Commission's Rules; Implementing Section 2 of the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), Order, DA-20-1490 (EB/OMD Dec. 17, 2020).

¹¹ 47 U.S.C. § 511(a) – (b).

¹² Acerome Jean Charles, Boston, Massachusetts, Order and Consent Decree, 35 FCC Rcd 6878 (2020).

- will be triggered if Cesar resumes pirate broadcast operations, along with voluntary surrender of broadcasting equipment. ¹³
- On June 18, 2020, the Bureau imposed a monetary forfeiture on Gerald Sutton for operating an unauthorized radio station.¹⁴
- On June 17, 2020, Anthony M. Edwards agreed to a monetary settlement with the Bureau, including a significant suspended monetary penalty that will be triggered if Edwards resumes pirate broadcast operations, along with voluntary surrender of broadcasting equipment.¹⁵

We note that the Commission's implementation of the PIRATE Act has been limited by two events beyond the agency's control. *First*, the novel coronavirus (COVID-19) pandemic struck shortly after Congress passed the PIRATE Act. In response to the pandemic, on March 23, 2020, the Commission implemented a mandatory telework policy that permits employees to conduct in-person work only to "perform critical, mission essential functions that cannot be performed remotely." Pirate radio investigations, however, require field agents to engage in significant, in-person activities to gather evidence, including witness statements and technical measurements of a pirate station's operations. As such, and in consultation with state and local pandemic guidance, the Commission has limited investigation of pirate radio cases since the first quarter of 2020.

Second, the Commission has received no funding to implement the PIRATE Act. The Congressional Budget Office and the Commission both estimated that it would cost \$11 million for the Commission to implement the Act. ¹⁷ And yet, the PIRATE Act itself contained no appropriation or other funding source to cover its implementation costs. And because Commission's FY 2021 budget ceiling level was established by the Office of Management and Budget (OMB) on December 3, 2019, before Congress adopted the PIRATE Act, the Commission did not have an opportunity to incorporate costs related to the implementation of the PIRATE Act during the President's fiscal year (FY) 2021 budget process.

The Commission anticipates taking the following future actions to implement the PIRATE Act:

• *Pirate "Sweeps."* The Act mandates that the Commission conduct "sweeps" in five markets with the most pirate radio activity. The Commission began studying existing enforcement data to determine which markets would be subject to a sweep. Due to lack of funding and pandemic-related restrictions on travel and building access, the Commission did not conduct sweeps during FY 2020. Prospectively, the Commission's ability to fully conduct the sweeps referenced in section 511(d)(1) of the Act will remain subject to obtaining new funding through the appropriations process, as well as the end of the COVID-19 pandemic.

¹³ Gerlens Cesar, Boston, Massachusetts, Order and Consent Decree, 35 FCC Rcd 6887 (2020).

¹⁴ Gerald Sutton, Alma, Arkansas, Forfeiture Order, 35 FCC Rcd 6365 (EB 2020).

¹⁵ Anthony M. Edwards, Stroudsburg, Pennsylvania, Order and Consent Decree, 35 FCC Rcd 6303 (EB 2020).

¹⁶ https://www.fcc.gov/coronavirus (last visited Dec. 4, 2020).

¹⁷ Congressional Budget Office, *Cost Estimate*, *S. 1228*, *PIRATE Act*, (June 7, 2019), https://www.cbo.gov/system/files/2019-06/s1228.pdf (CBO Estimate); *Federal Communications Commission Budget Request for FY2021: Hearing Before the Subcommittee on Financial Services and General Government, House Committee on Appropriations*, 3 (Statement of Ajit Pai, Chairman, Federal Communications Commission), https://docs.fcc.gov/public/attachments/DOC-363663A1.pdf.

¹⁸ 47 U.S.C. § 511(d)(1).

• *Database*. The Commission lacks appropriated funds dedicated to the development of the public database contemplated in section 511(g) of the Act. ¹⁹ Once such funds have been appropriated, the Commission will begin development of the database.

With this Report, the Commission satisfies the obligation pursuant to section 2 of the PIRATE Act to submit a report to Congress on (a) implementation of the PIRATE Act and (b) the associated enforcement activities for the previous fiscal year.²⁰

Submitted by:

Rosemary C. Harold Chief, Enforcement Bureau

¹⁹ 47 U.S.C. § 511(g); *see* CBO Estimate at 1 (including the development of the database among the non-recurring costs necessary to implement the Act).

²⁰ 47 U.S.C. § 511(c).